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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/817,136	04/01/2004	Maria G. Sclafani	SCF-002	1503
3897	7590	07/01/2005	EXAMINER	
SCHNECK & SCHNECK P.O. BOX 2-E SAN JOSE, CA 95109-0005			OLSON, LARS A	
			ART UNIT	PAPER NUMBER
			3617	

DATE MAILED: 07/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/817,136

Applicant(s)

SCLAFANI, MARIA G.

Examiner

Lars A. Olson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. A response was received from the applicant on May 27, 2005.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-11, 18, 25-35, 39 and 40 are rejected under 35 U.S.C. 102(b) as being anticipated by Beltrani et al. (US 5,324,219).

Beltrani discloses the same swimming flipper as claimed, as shown in Figures 20-33, that is comprised of a blade, defined as Part #2, and a footwear structure, defined as Part #3, that is removably coupled with said blade, as shown in Figures 24 and 25, said footwear structure being further comprised of a sole, defined as Part #16, with first and second lateral sides, and first and second flaps, defined as Part #18, that are each attached to one of said lateral sides, as shown in Figure 3, where said flaps are made of a conformable material and are adapted to attach and detach from each other by means of hook and loop fasteners in order to conform about a dorsal portion of a foot when attached to each other, as shown in Figures 3 and 4. Said footwear structure further includes a heel, as shown in Figures 23 and 24, and projections from a toe portion, defined as Part #23, and a heel portion, defined as

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Part #21. Said blade further includes a rear recess, defined as Part #8, into which said projection on said heel portion of said footwear structure is insertable, a front locking means, defined as Part #9, that cooperates with said projection on said toe portion of said footwear structure, and a forwardly extending flared portion, defined as Part #2, that is less rigid than an intermediate portion and a rear portion of said blade, as shown in Figure 24.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 15-17 and 19-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beltrani et al.

Beltrani et al., as set forth above, discloses all of the features claimed except for the use of a sole, a heel and flaps made from specific materials.

The use of a swimming flipper with a sole, a heel and flaps that are made from a specific material or materials would be considered by one of ordinary skill in the art to be a design choice based upon the desired physical characteristics of the material or materials from which the parts of said swimming flipper are to be made, and the required strength of the parts for said swimming flipper.

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Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention, to utilize a swimming flipper with a sole, heel and flaps that are made from a specific material or materials in combination with the swimming flipper as disclosed by Beltrani et al. for the purpose of providing a swimming flipper that is stronger and more conformable to a human foot.

6. Claims 36-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beltrani et al. in view of Lam (US 5,151,060).

Beltrani et al., as set forth above, discloses all of the features claimed except for the use of a loop that is attached to a blade of a swimming flipper, and a strap with attachment means that is threaded through said loop.

Lam discloses a swimming flipper, as shown in Figures 2 and 3, that includes a loop, defined as Part #4, that is attached to a fin or blade, defined as Part #2, of said swimming flipper, and a strap, defined as Part #5, that is threaded through said loop, where said strap further includes an attachment means, defined as Part #3.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention, to utilize a loop and a strap with attachment means, as taught by Lam, in combination with the swimming flipper as disclosed by Beltrani et al. for the purpose of providing a swimming flipper with additional foot support and securement.

Allowable Subject Matter

7. Claims 12-14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

8. Applicant's arguments filed on May 27, 2005 regarding claims 1-40 have been fully considered but they are not persuasive.

9. The applicant argues that Beltrani et al. (US 5,324,219) does not disclose the feature of a footwear structure with a sole having first and second lateral sides, and first and second flaps that are each attached to one of said lateral sides.

10. In response to the applicant's argument, Beltrani et al. does in fact disclose a footwear structure with a sole, defined as Part #16, with first and second lateral sides, and first and second flaps, defined as Part #18, that are each attached to one of said lateral sides, as shown in Figure 3, where said flaps are made of conformable material and are adapted to attach and detach from each other by means of hook and loop fasteners in order to conform about a dorsal portion of a foot when attached to each other, as shown in Figures 3 and 4. Therefore, for the reasons given above, the rejection of claims 1-40 is deemed proper and is not withdrawn.

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Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. Any inquiry concerning this communication from the examiner should be directed to Exr. Lars Olson whose telephone number is (703) 308-9807.

lo

June 24, 2005

**LARS A. OLSON
PRIMARY EXAMINER**

Lars Olson
6/24/05